

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1628 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KOKILABEN KHODIDAS PATEL

Versus

NATVARLAL N PATEL

Appearance:

MR MB GANDHI for Petitioner

MR JN JADEJA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2000

ORAL JUDGEMENT

This is a revision application under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 12.11.1997 recorded by the Learned Joint District Judge, Ahmedabad (Rural) in Civil Misc. Appeal No. 35/97 under which the Learned Lower Appellate Judge allowed the said appeal and set aside the order of the

Trial Court dated 12.3.97 granting interim injunction in favour of the present petitioner and against the respondents preventing them from interfering with the possession of the petitioner in respect of Block No. 155 being a part of land Survey No. 126-2.

2. The facts may be briefly stated as follows:-

3. The present petitioner instituted Civil Suit No. 45/97 before the Learned Civil Judge (JD) at Viramgam for a perpetual injunction preventing the respondents from dispossessing the petitioner in respect of the aforesaid land. The petitioner contended before the Trial Court that the aforesaid land Block No. 155 admeasuring 7 acres, 37 gunthas was purchased by her from one Maganlal Maneklal in a sum of Rs.50000/- under a registered sale deed and since then she is in the possession of the said land. That the sale was effected on 18.2.97 but thereafter on that very day at evening hours, the respondents approached her and asked her to hand over the possession of the said land. That a threat was also given to her that if she did not do so then the respondents would forcibly take away possession of the said land. That she came to know that the land S.No. 99 adjacent to the aforesaid suit land belong to the said vendor Maganbhai and respondents wanted to purchase the same at a low price. That since it was not agreed to, the respondents have threatened the petitioner with dispossession in respect of the suit land Block No. 155. The petitioner claimed before the Trial Court that she had a reasonable apprehension that if injunction is not granted, she would be dispossessed during the pendency of the suit and therefore after getting the sale deed in her favour on 18.2.99, prepared the plaint on 19.2.97 and instituted a suit on 20.2.97 with the aforesaid prayer.

4. In the said suit, the petitioner also submitted an application for interim injunction under Order 39 Rule 1-2 of the Code of Civil Procedure for preventing the respondents from dispossessing the petitioner pending the hearing and disposal of the suit.

5. In the aforesaid application, it appears that the Trial Court granted adinterim injunction and issued notice to the Respondents. The Respondents appear before the Court and contested the said application. The respondents contended that one of the respondents alongwith one Baldevbhai were in possession of the suit land and they were the owners thereof. That Maganlal was not the owner of it and therefore he had no authority to sale it. That, the petitioner had no right title or

interest in the suit land and she was not in possession thereof. The respondents therefore prayed for dismissal of the said application.

6. After hearing the parties and after considering the material on record, the Trial Court found that the petitioner was prima facie in possession of the suit land and consequently adinterim injunction granted exparte was made absolute till the disposal of the suit.

7. Feeling aggrieved by the said judgement and order of the Trial Court, the respondents preferred Civil Misc. Appeal No. 34/97. After hearing the parties, the Learned Joint District Judge allowed the appeal and set aside the order passed by the Trial Court by judgement and order dated 12.11.97. Feeling aggrieved by the said judgement and order of the Lower Appellate Court, the petitioner has preferred this Revision Application under Section 115 of the Code of Civil Procedure.

8. It has been mainly contended here that the Lower Appellate Court has committed error in allowing the appeal and in setting aside the order of the Trial Court. Notice was issued at the initial stage and thereafter the matter was admitted and therefore it was finally heard. I have heard Mr.M.B.Gandhi and Mr.J.N.Jadeja for the parties and perused the material available on record.

9. It has been mainly contended by the Learned Advocate for the petitioner that the petitioner has purchased the suit land under a sale deed dated 18.2.97 and therefore, she was put in possession in respect of the suit land by the vendor on that date and therefore, she was in lawful actual possession in respect of the suit land on 20.2.97, the date on which the suit was filed. In support of the said claim, the Learned Advocate for the petitioner has relied upon the affidavit of the petitioner as well as the affidavit of Maganbhai. There are also other affidavits to show that the petitioner was in possession in respect of the suit land on the date of the suit.

10. Now as against this, it has been contended on behalf of the respondents that the petitioner was not in possession in respect of the suit land on the day of the suit. It has been argued on behalf of the respondents that though Maganlal had filed affidavit appearing on the file, there was no mention as to what crop was there on the date of the suit in the suit land. It is also contended by him that similarly there is an omission even in the sale deed in respect of the crop standing in

the suit land. By these arguments, the Learned Advocate for the respondents wanted to show that neither Maganlal nor the petitioner in fact knew as to what crop was standing in the suit land on the date of the suit.

11. In support of the said arguments, the Learned Advocate for the respondent had also referred to the fact alleged in the plaint. In Para 2 of the said plaint, the petitioner originally showed that Bajri and Juvar were the crops standing in the suit land on the date of the suit. However, it was noticed that these were not the crops standing there on that date and therefore there was subsequent overwriting in respect of the crops standing there. This also indicates that neither the petitioner nor Maganlal actually knew as to what crop was standing in the suit land. On the other hand, it was not explained as to how the above error took place in approving the plaint. The error is no doubt a small one but it carries some importance in the light of the facts and circumstances of the case, particularly when 2 parties claim simultaneously to be in possession in respect of the suit land.

12. The respondent's contention is that water was given to the crop standing in the suit land at the date of the suit and the cultivation was actually undertaken for growing the said crop by Baldevbhai and one of the respondents. On the other hand, it was not explained as to how the above error took place in approving the plaint.

13. Another contention raised on behalf of the respondent is that Baldevbhai had filed caveat before the Court of the Civil Judge (SD), Ahmedabad Rural. Therefore the petitioner came to know about the same and she changed the idea of filing the suit at Ahmedabad. The plaint indicates that as per the original name of the Court typed in the plaint, it seems that the suit was intended to be filed at Ahmedabad in SD Court but thereafter, the suit seems to have been filed at Viramgam, the plaint show that Viramgam has been substituted for Ahmedabad and J.D. has been substituted for S.D. This fact to some extent supports the case of the present respondent. It seems that the caveats were filed not against the petitioner but against Maganbhai. This is naturally because the petitioner was not in the picture when the caveats were filed. The petitioner came to be in picture only on 18th and the suit was filed on 20th.

14. Another contention raised on behalf of the respondent is that there is some sort of small discrepancy between the fact stated in the plaint and the fact stated in the sale deed with respect to actual possession in respect of the suit land. It has been mentioned in Para 3 of the plaint that the petitioner got possession of the suit land after the sale deed was effected whereas in the sale deed there seems to be a reference of taking possession when the sale deed was effected. The discrepancy is small but considering the nature of allegations made by both the parties against one another, the discrepancy has some sort of significance.

15. The Learned Advocate for the petitioner has argued that the Learned Appellate Judge has considered that there was some previous award and previous suit also but Maganlal being the vendor was not a party thereof. There is no serious dispute on the fact that Maganlal was not party to it. It seems that the father of Maganlal was all the way a party to the previous proceedings and that fact is borne out from the records also. It is true that the land continued to be in the name of Maganlal and the mutation entry has not been finally approved. It seems that the inquiry does not appear to be complete and therefore the entry does not appear to have been finally approved. It is a fact that even before the date of the suit, this dispute was there which also shows that vendor Maganlal had some dispute with respect to this land even before the date of the suit and even before the date of the sale deed. The petitioner as purchaser of the land can be prima facie presumed to have nature of disputed entry in Revenue Records. It appears that the vendor Maganlal does not appear to have clarified this position in the sale deed.

16. The Learned Advocate for the respondent has argued that as per the sale deed, the vendor has undertaken to compensate the purchaser in case of dispute or difficulty but this is a common way of placing in the sale deeds and usually such averments would be noticed and therefore even if such an assurance is given in the sale deed it would not amount to an admission on the part of Maganlal that possession and ownership of suit land are in dispute.

17. Now so far as the land is concerned even the Revenue records show that this land Block No. 155 is shown therein as Vithal Parawala Timba. It therefore cannot be said that Vitthal Para land is a different road and not the land Block No. 155.

18. Then the petitioner's claim has been supported before the Trial Court by Maganlal. As stated above Maganlal is a vendor and he would naturally be interested in supporting the case of the petitioner with respect to possession. Another affidavit filed by the petitioner is that of one Rajnikant at Mark 3/6. He is a close relative of the petitioner and he is not staying around the said land. Mark 3/7 is affidavit of one Gopalbhai who is also a close relative of the petitioner. The suit land is surrounded by many other lands and the petitioner has not filed the affidavit of any of the land holders having his or their lands around the suit land. No explanation has been coming forward from the petitioner's side as to why the petitioner omitted to file the affidavit of the neighboring land holders.

19. On the other hand, the respondents have filed affidavit of land holders having their lands on all the directions of the suit lands. They all have supported unanimously that the suit land was and is in the possession of Baldevbhai and one of the respondents. So far other affidavits are concerned, the District Court has referred the same at Page 5 of the judgement (Para 7). The Lower Appellate Court has observed that the affidavits filed by the respondents of the appeal relate to the persons belonging to other village Niaka. It appears that there is a very short distance between Village Niaka and the village in which the suit land is situated but the fact remains that instead of getting affidavit from surrounding land owners, the petitioner has opted to file affidavits of relatives as well as of the persons staying away from the village in which a suit land is situated. Then there is also a reference to the previous affidavit of the husband of the petitioner in the order of the District Court.

20. It has been argued that the petitioner was not in good terms with her husband. However, the Learned Advocate for the respondent has argued that when the appeal was filed before the District Court, the address of the appellant shown therein was the address of the husband of the petitioner and the petitioner was served there. Even according to voters lists, the appellant is staying with her husband at the relevant point of time. The appellant appears to have filed an affidavit on 15.7.1999 stating that there was some dispute with her husband and therefore she has shifted to elsewhere at Village Baroda in Dholka Taluka. However, it is the case of the respondent that when the Misc. Appeal was filed before the District Court, the notice was served upon the

petitioner at the address of her husband at Ahmedabad.

21. It is also a fact that Civil Suit No. 297/93 was filed and there a consent decree was passed under which the suit land fell in the name and in the ownership of Baldevbhai and one of the respondents. The Ld. Advocate for the petitioner has argued that Maganlal was not a party to it but on the other hand, it seems that the matter was referred to arbitration in 1989 and arbitrators had given their award. It is also submitted that the arbitrators were close relatives of respondents as well as of Maganlal family and therefore they actually knew what was required to be done. We are not concerned with that relations but the facts remain that as per the record, arbitration award was passed in 1989 and it resulted in a consent decree. Even if we take it that Maganlal himself was not party in that proceedings, the fact remains that his father attended this proceedings and it is not explained as to how the father agreed in the aforesaid proceedings and participated therein on behalf of Maganlal. It has also been contended that crops have been taken in the suit land through irrigations and the suit land does not have irrigation facilities in itself. That therefore, the irrigation facility has been derived from the adjoining land and pipelines are in existence to show that the crops in the suit lands have been and are being watered through the well situated in the adjoining land of the respondents. The sale deed is silent on the right of Maganlal to take water from the adjoining well. It is also silent with respect to the existence of irrigation facilities. This shows that again Maganlal did not have much idea about the actual on the spot in the suit land.

22. Then it has also been brought on record that since the land revenue with respect of the suit land has been paid in the name of Maganlal, the receipt could be issued in the name of Maganlal but the fact remains that the land revenue has been paid by the respondents. Even if we take it that Maganlal was staying abroad and therefore he would not have paid land revenue but in that event the land revenue would have been paid by his father and not by the respondents. Maganlal does not appear to have explained this position anywhere either in the sale deed or during the prosecution of the suit. Even the petitioner does not appear to explain his position since she does not know about the same as she purchased the property just 2 days before the institution of the suit.

23. The petitioner appears to have produced some bills to show the sale of cummins but it has been

submitted that the bills belong to 1995 and it could not be on the record as to from which land the said crop was taken.

24. On the other hand, it has been contended that though the cummin crop is shown to have been sold in 1995 as per the said bills, the village Form 7, 7A and 12, in the year 1994-95-96, do not show that the said crops were there in the said year in the suit land. Therefore, the bills would not relate to the crops in respect of the said land.

25. It has also been stated during the course of the arguments that when the Commissioner was appointed to draw a Panchnama of the suit land, it was stated to the Commissioner that the petitioner was not in possession but Maganlal was earlier in possession and petitioner was not in possession on the date of commission. However, the Commissioner appointed by the Court had only to record the factual data as to what was visible on the spot. The Commissioner was never required to decide the issue of possession. It is not within their powers also. They have to record what they observe on the spot. He may not even be required to record the statement of the persons present showing something or other with respect to possession in respect of the property in respect of which the commission had been issued. Anyway it is brought on record of the Panchnama that a public notice was displayed in a board on the suit land stating that the petitioner was in possession in respect of the said land. It was therefore argued that this clearly indicates that even at the time when the Panchnama was drawn in presence of the Commissioner, the petitioner's possession was shown in the said notice displayed on the board which was affixed on the said land which would also show that the petitioner was in possession thereof. It has also been argued that if the petitioner was not in possession in respect of the said land and if the respondents or one of them was in possession thereof then in that case the above Board could not be there at that point of time.

26. It is not very clear that as to when the said board was placed on the said land. It is also not very clear as to what was the necessity for the plaintiff petitioner to place the said board on the said land. Moreover, the Board could be placed at any odd hours. It is a fact that the sale was effected on 18th. The plaint was prepared on 19th and presented to the Court on 20th. This would mean that this is a recent outcome and the Board must have placed during these few days. No such

notice appears to have been placed earlier to show the possession of Maganlal since there is no indication regarding the same in the Panchnama. Under the circumstances, if the Board has been placed there at any odd hours it cannot prima facie prove that the petitioner was in possession of this land at the date of the suit. As said above, the father of Maganlal had made a statement before the Revenue Authority and even the husband of the petitioner had earlier filed affidavit. These 2 documents are prima facie in favour of the respondent and against the petitioner as stated above, The petitioner has come out with a case that she is not pulling on well with the husband but it has also been submitted that the notice of the appeal before the Lower Appellate Court was served upon the petitioner at the address of the husband of the petitioner which may go to show that the aforesaid contention has been raised by the petitioner about her ill relation with her husband may be brought on record with a view to come out of the aforesaid fact stated in the affidavit of her husband.

27. It is true that the Trial Court had granted interim injunction and it was confirmed at the end of the decision on application for interim relief. However, the Trial Court has decided the matter mainly on the ground that the petitioner had filed registered sale deed and the suit was filed thereafter. The sale was made in her favour. The decision of the Lower Appellate Court is different from the decision of the Trial Court. Under the aforesaid circumstances, the District Court has allowed the appeal and I am of the view that the said decision of the Lower Appellate Court cannot be said to be without jurisdiction. It can also not be said that the Lower Appellate Court had committed material irregularities resulting in failure of justice and consequently this is not a case wherein this Court should interfere in this revision application. The Lower Appellate Court has properly considered the various aspects of the case referred to hereinabove. Under the circumstances, I am of the view that the Lower Appellate Court was right in allowing the appeal and dismissing the application of the petitioner and setting aside the order as granted by the Trial Court at an earlier stage and confirmed at the later stage. The judgement and order of the Lower Appellate court are not found to be illegal and as stated above, no material irregularity has been committed by the Lower Appellate Court while allowing the appeal of the respondent.

28. On the contrary, the aforesaid affidavits of the surrounding land holders, statement of the father of

Maganlal, documents relating to previous litigation and award of arbitration coupled with previous affidavit of the husband of the petitioner and also the land revenue receipts, the fact of irrigation to the suit land through the adjoining land of the respondents and the existence of irrigation facilities, these are all factors which are very relevant for prima facie holding that at the date of the suit, the petitioner was not in actual physical possession of the suit land. Consequently, the Civil Court was not right in granting injunction and the Lower Appellate Court was perfectly justified in setting aside the order of injunction. Therefore, no interference is required at this level in this revision application. The order of the Lower Appellate Court is a discretionary order and while allowing the appeal, the Lower Appellate Court has considered the relevant materials before it. Therefore no illegality is shown to have been committed by the said Court.

29. Under the aforesaid circumstances, this revision application is without merits and consequently deserves to be dismissed. Therefore, this revision application is ordered to be dismissed. Rule stands discharged with no order as to costs.

30. The Trial Court is directed to hear and dispose of the suit as early as possible and preferably within 6 months from the date of receipt of this order without being influenced by the observations made in the orders passed by the Civil Court, District Court or even by this Court.

jitu